

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-355-C - ORDER NO. 97-997
NOVEMBER 20, 1997

IN RE: Application of Eagle Communications,)	ORDER
Inc. for a Certificate of Public)	APPROVING
Convenience and Necessity to Provide)	CERTIFICATE TO
Resold Local Exchange Telecommunications)	PROVIDE LOCAL
Services in the State of South Carolina.)	SERVICE

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the Application of Eagle Communications, Inc. ("Eagle" or "the Company"). The Application requests that the Commission issue a Certificate of Public Convenience and Necessity authorizing Eagle to resell all forms of local telephone service in the State of South Carolina and to provide non-facilities-based private line and intra city non-switched services as a non-facilities-based carrier. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996), and the Regulations of the Commission.

By letter dated August 20, 1997, the Commission's Executive Director instructed Eagle to publish, one time, a prepared Notice of Filing and Hearing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing and Hearing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings and to provide notice of the

hearing date on this matter. Eagle complied with this instruction and provided the Commission with proof of publication of the Notice of Filing and Hearing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

A hearing was convened on November 6, 1997, at 11:00 a.m. in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. Eagle was represented by John F. Beach, Esquire. The Commission Staff ("Staff") was represented by Florence P. Belser, Staff Counsel. SCTC did not appear at the hearing.

Prior to the hearing, Eagle and the SCTC executed a Stipulation dated September 19, 1997. The Stipulation was filed with the Commission prior to the hearing in this matter. As a result of the Stipulation, SCTC withdrew its intervention in the Docket. The Stipulation provides the following:

- (1) The SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Eagle if the Commission makes the necessary findings to grant the Certificate and if all stipulated conditions are met;
- (2) Eagle agrees that any Certificate granted by the Commission will authorize Eagle to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;
- (3) Eagle agrees that it is not requesting the Commission to find whether competition is in the public interest for rural areas;
- (4) Eagle agrees that it will not provide local service, by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until Eagle provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30)

days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Eagle also acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;

- (5) Eagle agrees that if, after Eagle gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then Eagle will not provide service to any customer located within the service area in question without prior and further Commission approval;
- (6) Eagle acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures and guidelines do not conflict with Federal or State law;
- (7) Eagle and the SCTC agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and
- (8) Eagle agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both

the SCTC and Eagle and was filed with the Commission prior to the hearing in this matter. We therefore approve the stipulation.

In support of its Application, Eagle presented Kent Charugundla, President and CEO of Eagle, to testify. The purpose of Mr. Charugundla's testimony was (1) to demonstrate that Eagle possesses sufficient technical, managerial, and financial resources and abilities to provide the services for which Eagle seeks authority and (2) to show that the granting of this authority to Eagle is in the public interest.

DISCUSSION

S.C. Code Ann. §58-9-280 (Supp. 1996) provides that the Commission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC.

After full consideration of the applicable law, Eagle's Application, and the evidence presented at the hearing, the Commission finds and concludes that the Certificate sought by Eagle should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1996) and the evidence presented at the hearing which relates to that criteria:

(1) The Commission finds that Eagle possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1996). Mr. Charugundla testified that Eagle's technical ability is demonstrated by his demonstrated technical proficiency in marketing

the Internet services offered by American Network, Inc. and the teleconferencing services offered by Eagle Teleconferencing Services, Inc., as well as his experience in local loop service. Based upon this experience, Eagle's management has an exceptional understanding of the importance of customer care, billing, and the operation of a telecommunications network. Further, Eagle is currently providing local telecommunications services in the State of New York

Regarding Eagle's financial resources, the record reveals that Eagle is incorporated under the laws of the State of New York. Mr. Charugundla testified that Eagle has sufficient financial resources to provide local services.

No other party offered any evidence in opposition to Mr. Charugundla's testimony. Based on the undisputed evidence of the record, the Commission finds that Eagle possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that Eagle will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1996). Mr. Charugundla testified that Eagle intends to provide local exchange services by reselling the transmission facilities of incumbent local exchange carriers or other facilities-based providers. Mr. Charugundla specifically stated that Eagle will comply with all applicable rules, policies, and statutes applicable to the offering of those services and that Eagle fully intends to meet the Commission's service standards.

Furthermore, Mr. Charugundla stated that Eagle would make certain changes to its tariff, as suggested by Staff, to bring the tariff into compliance with Commission Rules and Regulations. No party offered any evidence to dispute Mr. Charugundla's testimony. Based on the undisputed testimony from Mr. Charugundla, the Commission believes, and so finds, that Eagle will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that Eagle's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1996). Mr. Charugundla stated that Eagle's service offerings would not adversely impact the availability of affordable local exchange service. Mr. Charugundla offered that certification of Eagle would serve the public interest through enhanced competition in the market for local services through the addition of a well-managed new entrant into the local market. No party offered any evidence that the provision of local exchange service by Eagle would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by Eagle will not adversely impact affordable local exchange service.

(4) The Commission finds that Eagle will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1996). Mr. Charugundla testified that Eagle will comply with the Commission's universal service requirements. No party disputed Mr. Charugundla's testimony. Based on the

undisputed evidence of record, the Commission finds that Eagle will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by Eagle "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996). Mr. Charugundla offered that approval of Eagle to provide local telecommunications services will benefit consumers by increasing competition. Through the promotion of competition, Mr. Charugundla offers that telephone companies will be forced to provide high quality services at competitive rates, which will ultimately benefit the consumers. Mr. Charugundla's testimony was undisputed as no party offered any evidence that approval of Eagle's Application would adversely impact the public interest. Therefore, the Commission finds that approval of Eagle's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996).

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by Eagle should be granted.

IT IS THEREFORE ORDERED THAT:

1. The Application of Eagle for a Certificate of Public Convenience and Necessity authorizing Eagle to resell all forms of local telephone service in the State of South Carolina and to provide non-facilities-based private line and intra city

non-switched services as a non-facilities-based carrier is approved.

2. The Stipulation filed by Eagle and the SCTC is approved by this Commission, is binding upon Eagle and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make no findings or conclusions regarding competition in the rural areas of South Carolina. Eagle shall conduct its operations in compliance with the Stipulation until further Order of the Commission.

3. Eagle shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes as proposed by the Commission Staff and to which Eagle agreed.

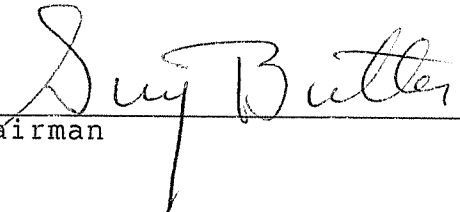
4. Eagle shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, and tests and repairs. In addition, Eagle shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Eagle shall file with the Commission the names, addresses, and telephone numbers of these representatives within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, Eagle shall promptly notify the Commission in writing if the representatives are replaced. Eagle is directed

to comply with all Commission regulations unless expressly waived by the Commission.

5. Eagle shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)

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ATTACHMENT A

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230